

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, June 15, 2005 – 2:00 p.m. – Room W130 House Building

**Members Present:**

Sen. David L. Thomas, Senate Chair  
Rep. James A. Ferrin, House Chair  
Sen. Darin G. Peterson  
Rep. Douglas C. Aagard  
Rep. Stephen D. Clark  
Rep. Ben C. Ferry  
Rep. Lorie D. Fowlke  
Rep. Ann W. Hardy  
Rep. Neal B. Hendrickson  
Rep. David L. Hogue  
Rep. Eric K. Hutchings  
Rep. Susan Lawrence  
Rep. Ross I. Romero  
Rep. LaWanna Shurtliff

**Members Absent:**

Sen. Patrice M. Arent  
Sen. Gregory S. Bell  
Sen. L. Alma Mansell  
Sen. Scott D. McCoy  
Rep. Scott L Wyatt

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Ms. Cassandra N. Bauman, Legislative Secretary

**Note:** A list of others present and a copy of related materials can be found at [www.le.utah.gov](http://www.le.utah.gov) or by contacting the committee secretary, Cassandra Bauman, at 538-1032. A recording of the meeting is available from the committee secretary.

**1. Committee Business**

Chair Thomas called the meeting to order at 2:17 p.m. Sen. Arent, Sen. Bell, Sen. Mansell, Sen. McCoy, and Rep. Wyatt were excused from the meeting.

Due to the lack of a quorum, the minutes were not approved.

**2. Tort Reform – Limits on Non-economic Damages; Prohibition of Contingent Fees for Expert Witnesses; and Attorney's Fees Recovery Act - Loser Pays**

Chair Thomas introduced the issue. He explained that the U.S. tort system is the most expensive system in the industrialized world; it accounts for 2.2 percent of gross national product in our country and totaled \$205 billion in 2004. He provided additional data on the tort system across the U.S. and indicated that there may be a need for some type of tort reform.

Mr. Chris Purcell, State Farm, explained that there are not as many frivolous lawsuits in Utah as there are in other states. He stated that there is not a major problem with these claims in Utah. He stated that Utah tort reform is a solution without a problem and he indicated that the legislation presented could create new problems. He suggested that, if "Attorney's Fees Recovery Act - Loser Pays" moves forward, the language should apply to both parties.

Mr. David Gessel, Utah Hospital Association, provided background on tort reform, specifically medical malpractice in Utah. He indicated that the high impact lawsuits are not a large portion of increasing health

care costs, stating that liability insurance for medical practitioners is high. Mr. Gessel spoke in favor of "Prohibition of Contingent Fees for Expert Witnesses" and "Limits on Non-economic Damages." He expressed mixed feelings for "Attorney's Fees Recovery Act - Loser Pays." He responded to questions from the Committee.

Mr. R. Chet Loftis, Utah Medical Association, expressed concern with the tort system, indicating that it is meant to deter bad behavior and, instead, deters physicians from being engaged in high risk procedures or specialties. He stated that it is also meant to spread risk by deterring costs and that those costs are difficult to pass on to the consumer because of the rate of increase. Mr. Loftis explained that those who are injured are supposed to be made whole, but that, in practice, most of those costs that should go to the injured party are going to legal advisers and counsel. He stated that arbitration is working well in Utah and decreasing litigation costs. He responded to questions from the Committee.

Mr. Charles Thronson, Parsons Behle & Latimer, stated that there is a difference between the practice of law and the issue of tort reform in Utah. He indicated that the term "tort reform" connotes a problem and explained that there has been no outstanding litigation or tort problem in this area in Utah. He responded to questions from the Committee.

Mr. Ralph Dewsnup, Dewsnup King & Olsen, indicated that increased malpractice litigation does not contribute in any significant way to the increasing costs of insurance premiums. He addressed the proposed legislation, concurring that the legislation creates new problems and is an attempt to solve a problem that does not exist. He responded to questions from the Committee.

Justice Michael J. Wilkins, Utah Supreme Court, stated that he is prohibited from making specific comments about the legislation. He explained that the law should encourage people to be honest, moral, and respectful in their behavior. He cautioned the Committee that some of the issues discussed may have state constitutional and federal constitutional ramifications. He advised the Committee to consider actual causes of litigation in the country and responded to questions.

### **3. Other Items / Adjourn**

Mr. Howe announced that the Legislative Process Committee will be meeting on Monday, July 11, 2005 at 2:00 p.m. to discuss access to legislators and invited all those who are interested to attend.

**MOTION:** Rep. Ferrin moved to adjourn the meeting. The motion passed unanimously with Rep. Clark, Rep. Ferry, Rep. Hendrickson, Rep. Hutchings, and Rep. Shurtliff absent for the vote.

Chair Thomas adjourned the meeting at 4:40 p.m.